

PATENT
Attorney Docket No.: JHU1470-3

#9
Dec
12/2/02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Lee and McPherron Art Unit: 1632
Application No.: 09/841,730 Examiner: J.T. Woitach
Filed: April 24, 2001
Title: USE OF FOLLISTATIN TO INCREASE MUSCLE MASS

Commissioner for Patents
Washington, D.C. 20231

RECEIVED

NOV 29 2002

TECH CENTER 1600/2900

RESPONSE TO THE RESTRICTION REQUIREMENT

Sir:


Responsive to the Restriction Requirement mailed October 1, 2002 (Paper No. 7), in connection with the above-identified patent application, consideration of the following remarks is respectfully requested.

Pursuant to the restriction requirement, Applicants elect with traverse the claims of Group I, claims 1 to 5, 13, 14, 20 and 40 to 42, directed to a transgenic non-human mammal comprising a transgene encoding a truncated activin type II receptor. The Examiner has identified the claims that are generic to Group I.

Although the claims of Group I have been elected in order to be fully responsive to the Action, the restriction requirement is traversed with respect to the division of Group I from Groups II and III. It is stated in the Office Action that the groups are directed to different and distinct types of transgenic animals, which are not obvious in view of each other. Applicants submit that, while the claims of Groups I, II and III are independent and patentably distinct, a search of the claims of elected Group I would require searching activin II receptors, including truncated forms thereof having dominant negative activity. As such, any art that is revealed for a search of Group I would be equally relevant to examination of the claims of Groups II and III. Accordingly, it is submitted that rejoinder and examination together of the claims of Groups I, II and III would not constitute an undue

CERTIFICATION UNDER 37 CFR §1.8

I hereby certify that the documents referred to as enclosed herein are being deposited with the United States Postal Service as first class mail on this date, November 21, 2002, in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231


Carrie E. Bickle

In re Application of:
Lee and McPherron
Application No.: 09/841,730
Filed: April 24, 2001
Page 2

PATENT
Attorney Docket No.: JHU1470-3

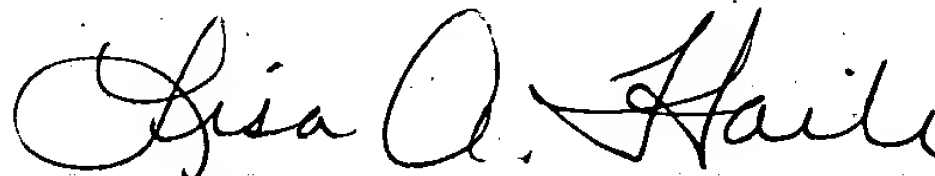
burden and, therefore, respectfully requested that the claims of Groups II and III be rejoined with those of elected Group I, and examined together, irrespective of the type of transgenic animal.

If any additional fee is required, the Commissioner is authorized to charge any fee (or credit any overpayment) to Deposit Acct. No. 50-1355.

The Examiner is invited to contact Applicants' undersigned representative if there are any questions relating to this application.

Respectfully submitted,

Dated: November 21, 2002



Lisa A. Haile, J.D., Ph.D.
Reg. No. 38,347
Telephone: (858) 677-1456
Facsimile: (858) 677-1465

USPTO Customer Number: 28213
GRAY CARY WARE & FREIDENRICH LLP
4365 Executive Drive, Suite 1100
San Diego, CA 92121-2133